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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

NO. 83-6339

KENNETH HANSON, Appellant,

v.

ILLINOIS, Appellee.

On appeal from the appellate court of Illinois

JURISDICTIONAL STATEMENT

Kenneth Hanson
Post Office Box 711, A-56084
Menard, Illinois 62259
Appellant, Pro Se

February 24, 1984

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

NO. _____

KENNETH HANSON, Appellant,

v.

ILLINOIS, Appellee.

On appeal from the appellate court of Illinois

JURISDICTIONAL STATEMENT

Kenneth Hanson, the appellant, appeals from the final judgment of the appellate court of Illinois, for the fifth judicial district, dated May 2, 1983 affirming appellant's criminal conviction of unlawful use of weapons pursuant to Chapter 38 Illinois Revised Statutes section 24-1(a)(4).

OPINIONS BELOW

The order of the Illinois Appellate Court appears in the appendix hereto.(p. 1a infra) The order is not published in the official reports.

The order of the Illinois Supreme Court denying leave to appeal is included in the appendix. (p. 4a infra) This order is also unpublished.

JURISDICTION

The judgment of the Illinois Appellate Court was entered on May 2, 1983. No petition for rehearing was filed. The Illinois Supreme Court denied leave to appeal on October 4, 1983. No petition for rehearing was filed.

A notice of appeal to this Court was duly filed in the Illinois Appellate Court on November 30, 1983.(p. 5a infra)

Appellant's motion for extension of time to docket this appeal was granted by Mr. Justice Stevens and appellant was allowed until March 2, 1984, inclusive, to docket this appeal.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2)

QUESTION PRESENTED

Whether Chapter 110A section 323(c) of the Illinois Revised Statutes is violative of the due process clause of the fourteenth ammendment of the United States Constitution when applied to require a criminal defendant-appellant to assume the burden of presenting a substitute transcript when a verbatim transcript has been made unavailable by the state and the defendant-appellant has shown that he requires a verbatim transcript to prosecute an effective appeal.

CONSTITUTIONAL PROVISIONS AND STATUTES

FOURTEENTH AMENDMENT, UNITED STATES CONSTITUTION

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law. . .

CHAPTER 110A ILLINOIS REVISED STATUTES, SECTION 612(c)

The following civil appeals rules apply to criminal appeals insofar as appropriate: (c) Procedure if no verbatim transcript is available and procedure for an agreed statement of facts: Rule 323(c) and(d).

ILLINOIS REVISED STATUTES CHAPTER 110A SECTION 323(c)

If no verbatim transcript of the evidence of proceedings is obtainable the appellant may prepare a proposed report of proceedings from the best available sources, including recollection. It shall be served within 14 days after the notice of appeal is filed. Within 28 days after the notice of appeal is filed, any other party may serve proposed amendments or his proposed report of proceedings. Within 7 days thereafter, the appellant shall, upon notice, present the proposed report or reports and any proposed amendments to the trial court for settlement and approval. The court, holding hearings if necessary, shall promptly settle, certify, and order filed an accurate report of proceedings. Absent stipulation, only the report of proceedings so certified shall be included in the record on appeal.

RAISING THE FEDERAL QUESTION

At the earliest possible time, after learning that a large part of appellant's trial transcript had been lost by the certified court reporter, trial counsel Jeffery Weiss filed an affadavit with the Illinois Appellate Court. The affadavit indicated that a "bystanders report" would be wholly inadequate to present the issues on appeal. Counsel entered his formal objection to the section 323(c) procedure at this time. (pp. 6a7a infra).

This same claim was advanced by appointed appellate counsel Randolph in the appellate court and on appeal to the Illinois Supreme Court. Counsel maintained that she could not advance any points of error on appeal or even perform her duties as mandated by Anders v. California 386 U.S. 738 because such a large part of the transcript was missing and the belatedly prepared "bystanders report" was totally inadequate.

The appellate court rejected this challenge and placed the burden of preparing and presenting the record solely on appellant. Appellant's due process objection to the use of the section 323(c) procedure was thus clearly before the court and framed to show that the contention was that 323(c) was unconstitutional if applied to this case.

Statement of the Case

On December 8, 1980 appellant was charged, in a Jackson County Illinois information, with two counts of misdemeanor assault and one count of felony unlawful use of weapons. Prior to trial the assault counts were severed from the felony count. A jury trial was conducted on the felony charge on May 20-21, 1981, during the course of which the charge was reduced to a misdemeanor on appellant's motion for a directed verdict at the close of the state's case in chief. A guilty verdict was subsequently returned. On June 4, 1981 an oral motion for a new trial was made and denied and appellant was sentenced to serve 364 days imprisonment and fined $1000 dollars. Appellant filed notice of appeal on June 5, 1981 and was released on $200,000 dollar appeal bond that same day. Appellant was found to be indigent and his motions for a report of proceedings and for appointment of the State Appellat Defender were both granted without cost to appellant. 1/

On September 14, 1981 the court reporter assigned to the trial of the cause filed part of the report of proceedings. She inserted a note indicating that she was unable to complete the rest of the record because, according to her a tape recorder, tapes and notebook containing the remainder of the proceedings was stolen. On November 4, 1981 the appellate court ordered trial counsel for appellant to prepare a "bystanders report" pursuant to Chapter 110(a) §323(c) of the Illinois Revised Statutes. On November 14, 1981 counsel submited his affadavit that lengthy portions of the trial were missing, including: All defense evidence, state rebuttal evicence, closing arguments, jury instructions, two motions for mistrial, one which was granted in part.

---

1. Security for the bond was furnished by appellant's relatives.

Counsel also at this time entered his objection to the forced use of the section 323(c) procedure. (F.n.a infra)

Meanwhile, on October 26, 1981 appellant counsel had filed a motion for an extension of time to file h r opening brief, because she had only a small part of the record to work from. The appellate court entered an order that a complete record, including a "bystanders report" must be filed by January 18, 1982. Although the record is silent, far as appellant can ascertain, appellate counsel presumably would then have had the statutorily allow able 35 days from that date to file her opening brief. Trial counsel was never served with a copy of this order, nor was appellant personally. No record was filed by appellant, or anyone in his behalf, by the January 18, 1982 deadline.

On January 25, 1982 the state filed a motion to revoke appellants bond for failure to prosecute his appeal. On February 11, 1982 the appellate court entered an order that appellants bond would be revoked as of March 10, 1982 unless a "properly certified" "bystanders report" was filed by that date. On February 23, 1982 trial counsel Weiss submitted a proposed bystanders report for certification of the trial court. The court refused to certify it. Trial counsel Weiss then departed Illinois to practice law in the state of New York. Trial counsels law partner, who was present during parts of the trial, the collaborated with the trial prosecutor and a "bystanders report" prepared solely by these two lawyers was certified by the trial judge on April 13, 1982. Appellant, and counsel on appeal were unaware of this document until it was filed in the appellate court.

On June 23, 1982 appellate counsel moved for an extension of time to file her brief. She indicated that the "bystanders report"

was inadequate and further facts needed to be developed before she could adequatly brief the appeal. Counsel indicated that she needed further time to attempt to obtain a "supplemental bystanders report" because by this time trial counsel was practicing law in New York and his law partner, who prepared the original "bystanders report" was residing in Florica. The motion was denied by the appellate court.

Appellate counsel briefed the appeal maintaining, among other things, that the forced use of the section 323(c) procedure rendered that statute unconstitutional as applied to this case. The appellate court affirmed the conviction and the Illinois Supreme Court denied leave to appeal.

THE QUESTION IS SUBSTANTIAL

Section 323(c) is a procedural device specifically designated as a part of the civil procedure of Illinois. It is made a part of the states criminal jurisprudence somewhat as an afterthought in the catch-all section 612. If it was applied on a voluntary basis in criminal cases, with the state bearing the primary burden of its usage, there would be no constitutional problem. Where, as here, its procedure is mandatory, with the entire burden falling on a criminal defendant to present a substitute record, the statute, as thus applied, clearly violates the due process clause.

The Illinois Appellate Court made it perfectly clear that section 323(c) must be used in this case. In the face of vigorous objections to the "bystanders report" procedure being lodged by both trial and appellant counsel, the appellate court's response was to threaten appellant with incarceration unless he prepared the report. The final response to these objections, the affirming of the conviction, came in the face of appellate counsels uncontroverted assertion

was inadequate and further facts needed to be developed before she could adequatly brief the appeal. Counsel indicated that she needed further time to attempt to obtain a "supplemental bystanders report" because by this time trial counsel was practicing law in New York and his law partner, who prepared the original "bystanders report" was residing in Florida. The motion was denied by the appellate court.

Appellate counsel briefed the appeal maintaining, among other things, that the forced use of the section 323(c) procedure rendered that statute unconstitutional as applied to this case. The appellate court affirmed the conviction and the Illinois Supreme Court denied leave to appeal.

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The Illinois Appellate Court made it perfectly clear that section 323(c) must be used in this case. In the face of vigorous objections to the "bystanders report" procedure being lodged by both trial and appellant counsel, the appellate court's response was to threaten appellant with incarceration unless he prepared the report. The final response to these objections, the affirming of the conviction, came in the face of appellate counsels uncontroverted assertion

that she needed a full transcript to provide appellant with an appeal that comported with due process and could not even perform her duties as mandated by Anders v. California 386 U.S. 738 (1967) without it.

The need for a full transcript is especially evident because appellant was represented by different counsel on appeal, only an oral, general motion for new trial was made and a period of several months elapsed before the transcript problem came to light. Appellant clearly made out far more than a "colorable need" for a full verbatim transcript. (Mayor v. City of Chicago 404 U.S. 189, 196 (1971))

After the filing of the record appellant counsel attempted to obtain an extension of time to secure more facts to raise a strong ground for appeal. (p. 8a infra) She was rebuffed in her efforts. Then, remarkably, she was informed via the opinion that she had not raised any issues on appeal. This case is similar in that regard to Mayer where the appellant could not procure a transcript, for different reasons, and showed a colorable need for a full transcript by his contensions of error. How could appellant counsel truthfully allege what errors occured if she could not probe the transcript of proceedings?

This Court rejected the placing of the burden of showing that an alternative procedure would be inadequate on the defendant in Mayer:

> "We hold today that a denial of appellants motion, eiether on the basis of the rule, or, in the context of his grounds of appeal, on the basis that he did not meet the burden of showing the inadequacy of the alternatives, would constitute constitutional error. (Mayer supra at 200)

This case should be controlled by the foregoing holding. The Illinois Courts not only construe 323(c) to place the entire burden of preparing a substitute record on a criminal appellant but also insist on its use when, as here, it is completely inadequate to provide a meaningful appeal.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Kenneth Hanson
P.O. Box 711
A-56084
Menard, Illinois 62259

February 24, 1984

APPENDIX

NO. 81-312

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

FILED
MAY 2 1983
FIFTH DISTRICT OF ILLINOIS
CLERK APPELLATE COURT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,	)	Appeal from the Circuit Court of Jackson County
v.	)	
KENNETH HANSON, Defendant-Appellant.	)	Honorable Richard E. Richman, Judge Presiding.

KARNS, J.

O R D E R

Defendant, Kenneth W. Hanson, was convicted of unlawful use of weapons under section 24-1(a)(4) of the Criminal Code (Ill. Rev. Stat. 1981, ch. 38, par. 24-1(a)(4)) after a jury trial in the circuit court of Jackson County. He was sentenced to 364 days' imprisonment and fined $1,000.

An official court reporter was present who made tapes and took stenographic notes of the defendant's entire trial; however, there is no verbatim record following the State's case-in-chief. The official court reporter inserted a note in the record that because of the theft of a tape recorder, tapes, and notebook, she was unable to complete the transcript from that point on.

Defendant's sole contention on appeal is that he has been denied

his right to an effective appeal because the theft of the official court reporter's notes and tapes prevented the transcription of the verbatim record of the entire trial. Defendant claims that the unavailability of a verbatim transcript requires the reversal of his conviction.

Defendant does not allege any assignment of error nor does he allege insufficiency of the evidence. In Flynn v. Vancil (1968), 41 Ill. 236, 242, 242 N.E.2d 237, 241, the court declared that where "the sufficiency of the facts was not argued or relied upon by the plaintiff, it must be presumed that the evidence was sufficient ***." The only issue in the trial was whether defendant had a weapon. Both sides agreed defendant was in a house that he neither owned nor where he worked at the time of the incident. Three witnesses, Mr. Parrish, Mr. Paramski and Ms. Shoellhorn, testified that defendant had carried a concealed weapon there. The only conflicting testimony was from the defendant, who stated he displayed a small cigarette lighter, hoping Mr. Parrish and Mr. Paramski would think it was a weapon since he was afraid of them. The trier of fact resolved the contested question of fact against the defendant and they were within their authority to do so.

Error is never presumed by a reviewing court. For this court to reverse appellant's conviction solely on the grounds of the unavailability of a portion of a trial transcript, we would have to assu there was reversible error at trial. There is no allegation of error before us. Reviewing courts cannot consider questions not raised or

argued on appeal as grounds for reversal.

Defendant relies on Griffin v. Illinois (1956), 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 and Mayer v. City of Chicago (1971), 404 U.S. 189, 92 S.Ct. 410, 30 L.Ed.2d 372. These cases are factually inapposite. These cases involve equal protection and due process arguments in relati to defendant's inability to pay for a transcript on appeal. These cases do not involve facts similar to the case at bar. Nothing in Griffin and Mayer requires a reversal because of loss of part of the record.

Appellate counsel contends that because other counsel represented the defendant at trial, the lack of a verbatim transcript is vital; however, a bystander's report of proceedings was prepared under Supreme Court Rule 323(c) (Ill. Rev. Stat. 1981, ch. 110A, par 323(c)), unfortunately without the expected cooperation of trial counsel, and defendant can only speculate in general terms in what manner he may have been prejudiced.

The defendant cites three cases where convictions were overturned because of the unavailability or inadequacy of the record on appeal (People v. Couvion (1965), 33 Ill.2d 408, 211 N.E.2d 746; People v. Stark (1966), 33 Ill.2d 616, 213 N.E.2d 503; People v. Seals (1st Dist. 1973), 14 Ill.App.3d 413, 302 N.E.2d 701.) In each of these cases, the defendants sought to raise an error occurring at trial, and no substitute record was available. Where a substitute record is available, a missing transcript is not grounds for reversal, especially where no assignment of error is advanced on appeal.

The judgment of the circuit court of Jackson County is affirmed.

AFFIRMED.

Harrison, P.J. and Welch, J., concur.

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

October 4, 1983

Mr. Kenneth Hanson
Reg. No. L37616
Box 500
Vandalia, IL 62471

No. 58407 - People State of Illinois, respondent, vs. Kenneth Hanson, petitioner. Leave to appeal, Appellate Court, Fifth District.
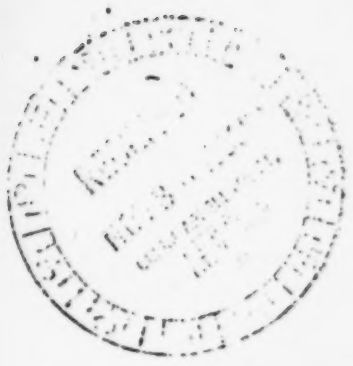
The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

Very truly yours,

Juleann Hornyak

Clerk of the Supreme Court

P. S. The Mandate of this Court will issue to the Appellate Court on October 26, 1983.



81-31

11-29-83

IN THE APPELLATE COURT
STATE OF ILLINOIS
FIFTH DISTRICT

KENNETH HANSON,

APPELLANT,

VS.

STATE OF ILLINOIS,

APPELLEE.

NO. 58497

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE is hereby given that Kenneth Hanson, the Appellant above named, hereby appeals to the Supreme Court of the United States from the final Order of the Appellate Court of Illinois, Fifth District, affirming the judgment of conviction, entered herein on October 4, 1983.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

KENNETH HANSON
PO Box 283
Willisville, Illinois 62997
Appellant, Pro Se

Best Copy Available

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DEC 04 1981
OFFICE OF THE STATE APPELLATE DEFENDER
MT. VERNON, ILLINOIS

No. 81-312

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, vs. KENNETH HANSON, Defendant-Appellant.	Appeal from the Circuit Court of Jackson County. No. 80-CF-360

AFFIDAVIT

I, A. JEFFREY WEISS, being first duly sworn upon oath, depose and state as follows:

1. I was the trial counsel for the Defendant-Appellant in the above-entitled cause.

2. That pursuant to the Order of the Appellate Court of Illincis, Fifth District, of November 4, 1981, I have attempted to review my trial notes regarding the preparation of a bystander's report for the second half of the trial in the above-entitled cause including the defense evidence, State's rebuttal evidence, closing arguments, jury instructions on two separate motions for mistrial, one of which was granted in part.

3. That after a review of the aforesaid trial notes and consultation with my client, it is my belief a bystander's report as requested would be wholly inadequate to present to this Court the issues on appeal.

4. That should this Court believe that an attempt at a bystander's report is necessary herein, due to Affiant's trial and briefing schedule in other matters, Affiant would be unable to prepare a bystander's report as requested until on or about March 1, 1982.

5. Affiant objects to the attempted use of a bystander's report in the above-entitled cause where a verbatim transcript of proceedings had been taken by an official Court Reporter and through no fault of the Defendant-Appellant, is now unavailable to be presented on appeal.

6. Affiant has attempted to discuss the matter of a bystander's report with the States Attorney for Jackson County on numerous occasions since he first learned of this impending problem. Affiant has been informed by the Assistant States Attorney, Michael Carr, that his trial schedule is such that he would be unable to even discuss with Affiant the issues to be raised in a bystander's report until sometime in December of 1981.

7. The aforegoing is true and correct to the best of my knowledge and belief.

A. JEFFREY WEISS

SIGNED AND SWORN TO before me this 13th day of November, 1981.

Notary Public

COPY

NO. 81-312

IN THE APPELLATE COURT OF ILLINOIS

FIFTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, vs. KENNETH HANSON, Defendant-Appellant.	Appeal from the Circuit Court of the First Judicial Circuit, Jackson County, Illinois No. 80-CF-360

FILED
JUN 23 1982
Walter Timmons
FIFTH DISTRICT OF ILLINOIS
CLERK APPELLATE COURT

MOTION FOR EXTENSION OF TIME

Now comes the appellant, by counsel, E. Joyce Randolph, Assistant Defender of the Fifth District Office of the State Appellate Defender, and respectfully requests that This Honorable Court grant him an extension of time in which to file the brief in the above-captioned cause.

In support thereof, he alleges as follows:

1. The record on appeal in the above-captioned cause was filed in This Honorable Court on April 13, 1982.

2. The appellant's brief in the above-captioned cause is due to be filed on or before June 22, 1982.

3. This extension of time is requested because additional facts pertaining to hearings in the trial court, which were not contained in either the verbatim report of proceedings or the bystander's report, have made it necessary for appellate counsel to seek affidavits in which to present those facts to This Court.

4. To provide the Court with some background as to this particular problem, it appears that Judge Richman made a pre-trial decision to allow the State to introduce evidence of defendant's alleged prior convictions to prove one of the elements of felony unlawful use of weapons; he reversed that decision at the conclusion of the State's case following a hearing on defendant's motion for directed verdict. At that hearing, defendant alleged that the State had not proven beyond a reasonable doubt that defendant and the person named in the certified records of convictions were the same person. Defendant then moved for a mistrial, alleging that the jury had been exposed to very prejudicial records of convictions, which had been used by the State to supply substantive evidence of other crimes. Although Judge Richman reduced the charge from a felony to a misdemeanor as a consequence of his ruling on defendant's motion for directed verdict, he denied the motion for mistrial.

5. As stated above, those proceedings are not contained in either the verbatim report of proceedings or the bystander's report. In late May, 1982 counsel was contacted by defendant, who relayed his recollections about the above proceedings in an effort to illustrate his contentions that the bystander's report was inadequate. Since defendant is unlearned in the law and his recollections raised certain questions in counsel's mind, counsel contacted John B. Moores, co-counsel at defendant's trial, who is currently residing and practicing law in West Palm Beach,

Florida. Mr. Moores collaborated with Assistant State's Attorney Michael Carr in completing the bystander's report after defendant's chief trial attorney, Jeffrey Weiss, moved to New York, and it had been Mr. Moores' understanding from Mr. Weiss that the hearing on the motions for directed verdict and mistrial had been preserved in the verbatim transcript.

6. During the above-described conversation with Mr. Moores, which occurred on June 9, 1982, Mr. Moores related the facts of the motions hearing as they are alleged in paragraph 4 of this motion. He was very cooperative and agreed to provide an affidavit as to those facts, although he did not anticipate that he could prepare a complete affidavit until the week of June 21, due to heavy trial responsibilities. That affidavit has not yet been received, although counsel expects to receive it within one week. Counsel regrets the delay involved in filing the brief, but given the incomplete state of the record, and the fact that defendant's trial attorneys are now practicing law in New York and Florida, the delay is unavoidable. Moreover, counsel feels that, in order to provide defendant with a meaningful appeal, facts sufficient to support the issue outlined in paragraph 4 should be presented to This Court.

7. Previously, This Court has granted appellant two extensions of time in the above-captioned cause.

WHEREFORE, counsel respectfully requests This Honorable Court to extend the time within which to file the brief in the above-captioned cause to and including July 22, 1982.

IN THE SUPREME COURT OF THE UNITED STATES

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SUPREME COURT, U.S.

KENNETH HANSON

v.

ILLINOIS No. 83-6339

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The appellant asks leave to file the attached petition for writ of certiorari without prepayment of costs and to proceed in forma pauperis.

affidavit in support of this motion is attached hereto.

AFFIDAVIT

I, Kenneth Hanson being first duly sworn according to law, depose and say that I am the petitioner in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said case or to give security therefor; and that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed? No

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

   b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. February, 1 85
   Appx. $800/month

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends or other source? No

   a. If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account? No

   a. If the answer is yes, state the total value of the items owned. No

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)? No

   a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.
   NONE

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Kenneth Hanson

Subscribed and Sworn to Before me this 2d day of April, 1984. Thomas Clark
1-29-87

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

NO. 83-6339

RECEIVED
FEB 27 1984
OFFICE OF THE CLERK
SUPREME COURT, U.S.

KENNETH HANSON, Appellant,

v.

ILLINOIS, Appellee.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The appellant, Kenneth Hanson, who is now being held in an Illinois prison, asks leave to file the enclosed jurisdictional statement on appeal from the Appellate Court of Illinois without prepayment of costs and to proceed in forma pauperis pursuant to rule 46.

Appellant's affidavit in support of this motion is attached hereto.

Kenneth Hanson
P.O. Box 711
A-56084
Menard, Illinois 62259
Appellant, Pro Se

IN FORM. PAUPERIS AFFIDAVIT

UNITED STATES SUPREME COURT

(Insert appropriate court)

KENNETH Hanson, Appellant
( )

v.

ILLINOIS, Appellee
( )

AFFIDAVIT IN SUPPORT
OF REQUEST
TO PROCEED
IN FORMA PAUPERIS

I, Kenneth Hanson, being first duly sworn, depose and say that I am the petitioner in the above entitled case, that in support of my motion to proceed without being required to prepay fees, costs or give security therefore: I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore; that I believe I am entitled to relief.

I further swear that the responses which I have made to questions and instructions below are true.

1. Are you presently employed? Yes ( ) No (X)
   a. If the answer if "yes," state the amount of your salary or wages per month, and give the name and address of your employer.

   b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received. February, 1983, approximately $800 per month.

2. Have you received within the past twelve months any money from any of the following sources?
   a. Business, profession or form of self-employment? Yes ( ) No (X)
   b. Rent payments, interest or dividends? Yes ( ) No (X)
   c. Pensions, annuities or life insurance payments? Yes ( ) No (X)
   d. Gifts or inheritances? Yes ( ) No (X)
   e. Any other sources? Yes ( ) No (X)

   If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the last twelve months.

3. Do you own cash, or do you have money in a checking or savings account?

   Yes ( ) No (X) (Include any funds in prison accounts.)

   If the answer is "yes," state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

   Yes ( ) No (X)

   If the answer is "yes," describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

None

I declare under penalty or perjury that the foregoing is true and correct.

Executed on February 24, 1984
(Date)

Kenneth Hansen
(Signature)

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Office - Supreme Court, U.S
FILED
MAY 25 1984
ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

NO. 83-6339

KENNETH HANSON,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT, FIFTH JUDICIAL DISTRICT

NEIL F. HARTIGAN
Attorney General
State of Illinois

MARK L. ROTERT
MICHAEL V. ACCETTURA
Assistant Attorneys General
500 South Second Street
Springfield, IL 62706
(217) 782-1090

Attorneys for Respondent.

QUESTION PRESENTED FOR REVIEW

1. Whether the theft of a court reporter's notes, resulting in her inability to transcribe a portion of a criminal defendant's trial, resulted in a violation of Petitioner's constitutional rights, based upon his claim of inability to effectively appeal his cause.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

NO. 83-6339

KENNETH HANSON,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT, FIFTH JUDICIAL DISTRICT

OPINION BELOW

The May 8, 1983 opinion of the Illinois Appellate Court in the case of People v. Hanson, No. 81-312 (Fifth District), is found at page 1a of Petitioner's appendix.

JURISDICTION

Petitioner seeks this Court's review as a result of his 1981 conviction under Ill. Rev. Stat. (1981), ch. 38, § 24-1(a)(4). The Illinois Supreme Court denied Petitioner's petition for

leave to appeal on October 4, 1983.

Petitioner sought this Court's review on November 30, 1983. Jurisdiction to this Court is correctly sought by Petitioner pursuant to 28 U.S.C. § 1257. However, as treated more fully in the argument contained herein, Respondent does not believe that Petitioner has shown any reason for this Court to exercise its discretion to grant the Petition for Writ of Certiorari.

CONSTITUTIONAL PROVISIONS

Petitioner relies on the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

As noted in the opinion of the Illinois Appellate Court, Petitioner was convicted of unlawful use of weapons, in violation of Ill. Rev. Stat. (1981), ch. 38, § 24-1(a)(4). (Opinion at 1). He was sentenced to serve a term of 364 days imprisonment, and to pay a fine of $1,000.

A court reporter was present throughout Petitioner's trial, however, there is no verbatim record following the State's case-in-chief, due to the fact that a tape recorder, tapes, and

notes of the official court reporter were stolen. The court reporter was unable to complete the transcript from that point on.

On appeal, Petitioner alleged that his rights were violated in that he was denied his right to an effective appeal due to the lack of a transcript.

The appellate court rejected this claim, noting that there had been no allegation or error, nor allegation of insufficiency of the evidence. As such, the court refused to presume error, and rejected Petitioner's claim that the lost transcript violated his rights.

It is from the May 8, 1983 order of the Illinois Appellate Court that Petitioner now seeks this Court's review.

REASONS FOR DENYING THE WRIT

PETITIONER'S CONSTITUTIONAL RIGHTS WERE NOT VIOLATED WHERE A PORTION OF THE TRIAL TRANSCRIPT WAS UNAVILABLE DUE TO THE THEFT OF THE COURT REPORTER'S NOTES.

Petitioner alleges, generally, that his constitutional rights were violated because the court reporter was unable to provide a transcript of any portion of the trial subsequent to the State's case-in-chief, due to the theft of her notes.

Specifically, Petitioner alleges that Ill. Rev. Stat. (1983), ch. 110A, § 323(c) is unconstitutional in that it places a burden upon a criminal defendant-appellant, on direct appeal, for providing a report of proceedings, if no verbatim transcript is available. The statute provides, in relevant part, as follows:

> If no verbatim transcript of the evidence of proceedings is obtainable the appellant may prepare a proposed report of proceedings from the best available sources, including recollection.

Ill. Rev. Stat. (1983), ch. 110A, § 323(c).

Thus, the statute places the burden on the person seeking relief on appeal, be that a criminal defendant, a civil defendant, a civil plaintiff, or the People in a criminal case. The burden of preparing a report of proceedings is not placed only on a criminal defendant. Rather, it is placed on the appellant, whoever he or she may be. Furthermore, Petitioner was

not left to prepare a report of proceedings on his own; he was represented by court-appointed counsel on appeal as a result of his indigence.

Finally, Petitioner's claim of a constitutional violation is soundly refuted by the applicable caselaw regarding the right to a transcript of proceedings. It has been true for many years that an indigent defendant must be provided, free of charge, with a transcript of whatever record was made at trial. Hardy v. United States, 375 U.S. 277 (1964). However, neither Illinois (see People v. Armstrong, 43 Ill.App.3d 586, 597, 357 N.E.2d 84, 91 (1976)) nor the federal courts (see United States ex rel. Smart v. Pate, 318 F.2d 559, 562 (7th Cir. 1963) and United States v. Rhodes, 398 F.2d 655 (7th Cir. 1968), cert. denied, 394 U.S. 962 (1969)) recognize a claim regarding allegedly violative denial of a transcript, absent some fault, hostility or invidiousness on the part of the State. Such was neither present nor alleged in the instant case. Rather, Petitioner's allegation merely contends that the loss of the court reporter's notes is somehow violative of his constitutional rights. There is simply no basis in fact or law to support his claim.

In summary, the People of the State of Illinois respectfully submit that Petitioner's constitutional rights were not violated as a result of the court reporter's notes having been stolen. As such, it is respectfully requested that this

Court not exercise its discretion and deny Petitioner's petition for writ of certiorari.

CONCLUSION

In light of the foregoing, the People of the State of Illinois respectfully request that this Court deny Petitioner's petition for writ of certiorari.

Respectfully submitted,

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ORIGINAL

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

NO. 83-6339

KENNETH HANSON,

Appellant,

v.

STATE OF ILLINOIS,

Appellee.

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEE'S DOCUMENT ENTITLED "BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI" ETC.

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May 25, 1984

The state apparently treated appellant's jurisdictional statement as a petition for writ of certiorari. While this Court may decide that it does not have jurisdiction under Title 28 U.S.C. section 1257(2) and treat the appellant's papers as a petition for writ of certiorari pursuant to Title 28 U.S.C. section 2103, it would seem impossible to do so on the record now before the Court. Indeed, it appears that appellee has conceeded every element, including the presence of a substantial federal question, necessary to invoke this Court's appellate jurisdiction.

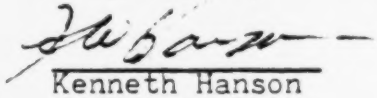
Appellee's argument appears to be that the state had no specific intent to violate appellant's rights and it should not be held responsible for the action, or inaction, of the court reporter. Illinois has a monopoly on court reporting in criminal cases (and civil cases in every county but Cook). They are regulated, including their state payment schedule, by Chapter 37 Illinois Revised Statutes section 651 et seq. They are paid by the state and do the state's business.

It is well settled that a specific intent to violate constitutional rights is not necessary element to state a cause of action for civil rights violations. Monroe v. Pate 365 U.S. 167, 186 (1961). The court reporter in the instant action is clearly a state agent and it is equally clear that this agents conduct has denied appellant his right to due process of law.

Illinois has demonstrated that it will invoke section 323(c) no matter how inadequate it may be. As long ago as 1958 a Seventh Circuit Judge termed the "bystanders report"procedure at issue here to be a.". . . dormant primitive procedural device." (U.S. ex rel. Westbrook v. Randolph 259 F. 2d 215, 228 (1958) (Fennegan J. dissenting). That statement is equally true today.

The judgment should be vacated and reversed or alternativly probable jurisdiction noted and further proceedings ordered.

Respectfully submitted,



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